IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

Crl.Rev.Pet.No. 1379 of 2007()

CRA.280/2005 of SESSIONS COURT, KOLLAM
CC.663/2003 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOTTARAKKARA

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REVN. PETITIONER: REVISION PEITIONER/APPELLANT/ACCUSED

SIVANANDAN PILLAI,(R.S.PILLAI),
S/O.RAGHAVAN PILLAI,SREEJA BHAVANAM,
KOTTATHALA WEST,PUTHOOR,KOTTARAKKARA.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS: RESPONDENTS/RESPONDENTS/COMPLAINANT

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1. THE STATE OF KERALA REPRESENTED BY
PUBLIC PROSEUCUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. KOCHUNARAYANA PILLAI,S/O.KUNJA PILLAI,
MARAMGATTU VEEDU,KOTTATHALA WEST,
PUTHOOR WEST,PUTHOOR,KOTTARAKKARA.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR
SRI.B.MOHANLAL

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 17/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 1379 OF 2007 B

Dated this the 17th day of October, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.663/2003 on the file of the J.F.C.M.-I, Kottarakkara challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner made the following further submissions before me:-

On 15.12.99 an agreement was entered into between the accused and PW1 to the effect that the accused should pay Rs.2,000/- per month to the complainant and after 11 months the accused would purchase the machinery for Rs.2,00,000/-. According to PW1, the accused did not pay the sum of Rs.2,00,000/- and he therefore went to Orissa in search of the accused to find that he was not there and the machinery had also been removed. PW1 the complainant therefore lodged a complaint before the Belliguda Police Station in Orissa on 7.7.02. The Belliguda police arrested the accused on 12.2.03 i.e., after more than five months of lodging the complaint which is just one week prior to his arrest by the police. The complainant would say that on 5.2.03 the accused issued Ext.P1 cheque for Rs.3,00,000/-. If from 7.7.02 onwards there was no co-operation between the accused and the complainant as admitted by PW1, it is unlikely that on 5.2.03 the accused would have executed Ext.P1 cheque for Rs.3,00,000/-. The case of the accused on the other hand is that on 22.11.99 when machinery worth Rs.2,00,000/- was entrusted to him he had given a signed blank cheque to PW1 by way of security. The conviction recorded by the courts below overlooking the above aspects cannot be sustained.

5. I am afraid that I cannot agree with the above submissions.

It may be true that after PW1 lodged the complaint against the accused before the Belliguda Police Station on 7.7.02 for dishonest removal of the machinery the parties might have been in a strained relationship. But then the specific case of the complainant is that thereafter the accused came round with a proposal to settle the dues and that was why the complainant did not exert any influence with the Belliguda police after lodging a complaint on 7.7.02. It was as part of settling the claim that on 5.2.03 the accused issued Ext.P1 cheque for Rs.3,00,000/-. This was 7 days prior to his arrest by the police. But on 7.2.03 when the cheque was presented for encashment through the collecting bank of the complainant, the cheque was dishonoured. This probably may be the reason for the complainant causing the arrest of the accused on 12.2.03. Moreover, the accused has not been able to substantiate his defence that on 22.11.99 he issued a blank signed cheque to the complainant. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the finding of guilt. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision

Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided he complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 2nd respondent complainant by way of compensation under section 357 (3) Cr.P.C. a sum of Rs.3,00,000/- (Rupees three lakhs only) within six months from today, then he need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, he shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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